REMARKS ON MR. HERBERT CROLY'S PAPER ON "STATE POLITICAL REORGANIZATION"

BY CHESTER H. ROWELL
Fresno, California

It is quite possible to accept absolutely the standpoint of Mr. Croly's paper, and yet to dissent from its principal conclusion. The standpoint is that of the evolutionist, who regards contemporary "progressive" policies not as finalities, but as transitional phenomena in the development of popular government. The conclusion is that these policies are nevertheless bound to acquire a certain relative finality, which will make them self-obstructive of their own purpose. And the answer is that the movement momentarily expressed in these policies is deeper than they are, and that its vitality can overcome their mechanical limitations.

Mr. Croly identifies the Progressive movement with the devices of direct popular government, which he says it proposes to substitute for representative government. He takes Oregon as the type and Senator Bourne's famous rhapsody as the gospel of the movement. He analyzes the natural evolution of direct government out of the failure of delegated government. The once omnipotent representative legislatures were limited first by those who distrusted the people, through constitutional checks and judicial aggressions, and then by the Jacksonian democracy, through executive and party aggrandizement. But the very constitutional limitation was itself operated by direct vote of the people. As representative legislation degenerated, this originally restraining device became by contrast the only moveable portion of the system, and was the ordinary resort when real law making was needed. Direct legislation under the guide of constitutional amendment transformed constitutions into codes of laws, and the more detailed they became, the more impossible it was to legislate by any other method. It was only a step from this subterfuge to the frank adoption of the initiative and referendum, and so modern direct legislation is an immediate development from the attempt to limit the old system. Whatever its defects, it is at least futile to oppose it by stubbornly adhering to a system already hopeless. And it has at least the virtue

of entrusting somewhere the power necessary for governmental efficiency. The Jacksonian democracy had failed to accomplish this. It had concentrated power on the executive branch, but dissipated that power by dividing it among a multitude of independent officials separately elected. Its system of party responsibility also broke down in the states. The danger is suggested that the new Progressive democracy may fail in the same way, by dissipating legislative power. Popular government is no more attained by a multitude of referendums than by a multitude of elections. The legislature having now lost most of its few remaining functions must either acquire new ones or disappear. Mr. Croly would regenerate it with new functions, but he attributes to the Progressives a willingness to let it disappear. He suggests that by proportional voting the legislature may be made to represent the various minority oppositions, as the governor represents the dominant majority. Confer the legislative initiative on the governor and the power of veto and amendment on the legislature, with referendum when they disagree. But any such reconstruction is hopeless under the leadership of the present Progressives, who regard direct and delegated government as mutually exclusive, and distrust those minorities or exceptional individuals who are the necessary vanguard of progress. Such leadership may win elections, but it can not reconstruct institutions beyond the point where they will serve only to dissipate, discredit and obstruct popular rule.

This, briefly, is the analysis and the conclusion. Let us, instead, examine the concrete facts. And in doing this, we must deal first with the progressive movement as a movement, rather than merely with the so-called Progressive "policies."

However closely we may retrospectively identify the Progressive movement with direct legislation, there are few of the state movements outside of Oregon which began that way, and no others yet embody exclusively the Oregon type. Most of the movements have begun consciously as negative and destructive revolutions, and have moved on to constructive work only after the necessary destruction was finished. Evolution began in revolution. Wisconsin began with revolt against a political machine and went on to the regulation of corporations. The direct primary was an incidental weapon and direct legislation an afterthought. Illinois began by a fight against the Chicago traction monopoly. In Iowa the first revolt was again a tariff theory which ignored the consumer. In New York the beginning was the discovery of the insurance frauds, which led to a public

service commission and miscellaneous reforms. In New Jersey it was the personal leadership of a general disgust. In Ohio it is revolt against boss rule and in Pennsylvania a longing for a government that will not steal. In New Hampshire and California it was revolution against railroad usurpation. Nationally, the movement emerged in President Roosevelt's crusade for the square deal administered by himself, and crystallized in the insurgent bolt on the tariff bill.

Superficially, then, the movement looks like a mass of miscellaneous reforms, held together not by direct legislation, which is treated as only one reform among others, but by a common revolt against a political machine dominated by special interests. Indeed, this was the first and is still the usual generalization in regard to the movement. The "muckrakers," who were its first heralds, even invented a nomenclature for this generalization. "The System," "Special privilege" and "Big Business" have acquired a technical jargon meaning now familiar to everybody. Even yet, most of the Progressive leaders go no further than this in their self-analysis. A common spirit or temperament more than any explicit common policy holds them together. And while the devices of direct government have spread by contagion until they are now practically a common slogan, there are few who propose to supersede representative government by them. If that supersession were to occur it would be by the inherent force of these policies and not by any conscious intent on the part of more than a few of their advocates. Most Progressives, in fact, do not yet realize that the failure of representative government was anything more than moral. They believe in representative government, and fondly hope to restore it by making the present system work honestly. They regard direct legislation as a mere corrective power, to be held in reserve, so as to force representative government to be representative, but to be seldom used. Experience will doubtless demonstrate to them that the problem is not so simple as this, but at least they are in a mood to seek a solution that will restore rather than destroy representative government. The exceptional situation in Oregon is generally attributed to the accidents of personal leadership. In general, the purpose of the Progressive movement is not direct government or delegated government, but popular government, by either device or both.

This analysis is purposely superficial, in order to meet the question of leadership, which is also superficial. Mr. Croly argues that because some of the Progressive leaders take a superficial view of the finality of

direct legislation, they will fail of leadership beyond the limits of that view. The answer is that there is not one superficial view, but many, in sufficient variety to meet almost any concrete exigency of practical leadership. It is probably better for immediate leadership to be relatively superficial. Theodore Roosevelt would lose his chief usefulness if he were able to analyze himself from the perspective of the future historian. Jonathan Bourne is the better crusader for undelegated government because he believes it a panacea. It is enough for the captain to see straight ahead and for the general to grasp the military strategy. The philosophic analyst is not a good soldier. He reads papers before the Political Science Association, for the delectation of posterity.

It may therefore be earnestly maintained that both the policies and the leadership of the Progressive movement are sufficiently adaptable to meet the future, as well as the present, of the problem of state reconstruction. As an evolutionary force, the movement is all the better for feeling its way somewhat vaguely, one step at a time. If the governmental theories of our forefathers had been less clearly reasoned, we should not now be so hampered by the rigidity of the institutions they bequeathed us.

Neither the actual leaders of the Progressive movement nor their methods of accomplishment correspond to the simple type held up as a warning by Mr. Croly. Theodore Roosevelt is a temperamental Progressive and Governor Hughes and President Taft have at least accomplished certain Progressive results, but none of these at all resembles the type. Neither does Gifford Pichot, who is a Progressive both in temperament and in creed. Woodrow Wilson has the full academic complexity of view—perhaps too much of it. Senator La Follette may resemble the type in the belligerence of his political campaigns but as a responsible administrator and state party leader, he showed comprehensive and constructive statesmanship of the first rank. The reforms in Wisconsin were not accomplished by direct legislation, but by a campaign to make the legislature representative. In fact, with a final development of much the same governmental systems, the governmental experience of Wisconsin is almost exactly opposite to that of Oregon. The difference is one of leadership. Neither can be taken as exclusively typical.

The recent experience of California in transforming itself in a single leap from one of the most reactionary to perhaps the most Progressive of state governments is interesting and significant. The movement,

up to the moment of actual victory, was one of pure revolt. It began in the determination of a few men to try by organized political action to depose the Southern Pacific from its domination of the state government. These men organized in 1907, as a faction of the dominant party, the Lincoln-Roosevelt Republican League, using as a nucleus certain local reform organizations. Their first platform consisted practically of a declaration of war on the railroad machine and a demand for a direct primary. They were swamped with appointed delegates in the state convention of 1908, but managed to elect enough members of the legislature of 1909 to obtain from it an imperfect direct primary law. They presented to the Republican primaries of 1910 a complete state and legislative ticket, headed by Hiram W. Johnson, now Governor of California. Their platform was still chiefly a declaration of war on the railroad machine, and Mr. Johnson, who traveled 18,000 miles by automobile in the campaign, proclaimed to the people of every cross-roads his personal platform in these words: "When I am Governor I am going to kick out of the government of California William F. Herrin and the Southern Pacific." The Johnson ticket carried the primaries and the League became the regular Republican party organization of the state. Then for the first time a comprehensive program of constructive policies was announced, in the name not of a faction, but of the party, as the regular Republican platform. That platform promised among other things to submit amendments providing for the initiative, referendum and recall, but was composed principally of definite legislative pledges. After the election, Meyer Lissner, chairman of the State Republican Committee, introduced a unique method of party responsibility. He called a meeting of the party committee, to which the members-elect of the legislature were invited, and announced that as party chairman he was not interested in the distribution of patronage, but was very much interested in the fulfillment of platform pledges. He therefore asked and received authorization to appoint committees, composed of members of the party organization, members of the legislature, and outside experts, to prepare and present to the legislature preliminary drafts of bills covering each of the platform pledges. Fortunately, the Democratic platform had contained practically the same pledges, and party lines were obliterated in the legislature. These bills were considered and in some cases radically revised by the legislature, but every one of them passed in some form, and, within four months of the day of election, the state of California

presented the example of every pledge in a radically comprehensive party platform either already enacted into law or submitted to the people for ratification as a constitutional amendment. The amendments were all passed at a special election and an extra session of the legislature is now sitting to complete the necessary enabling legislation. Within a year of the incoming of the new administration, every party pledge will be actually operative in law. All this has been accomplished by the old forces of party responsibility and legislative action, without a single initiative or referendum vote except the reference of constitutional amendments already required by the old constitution. Even these would have been passed by the legislature, without referendum, if it had had jurisdiction to do so. In California, for once, political organization and personal leadership have made representative government both representative and efficient. The only place in which delegated government has been displaced is in the party nominations, which are of course by direct primary. But this only applies to nominations the method we have always used for elections. What reactions the future may have in store is of course unknown, but this is the record so far.

Both party platforms had favored a simplification of the primary law; the direct election of United States senators; the abolition of the "party circle" on the ballot and the non-partisan nomination of judges; the initiative, referendum and recall; simplified criminal procedure; non-partisanship in appointments; business administrative reforms; conservation legislation; the extension of the powers of the railroad commission; and a public service commission. The Republican platform, in addition, had called for a shorter ballot, county home rule, a workmen's compensation act, and the submission of a women suffrage amendment. Surely an ambitious program for a single session of the legislature less than three months in length! The history of its accomplishment is told in the "Story of the California Legislature of 1911" by Franklin Hichborn (San Francisco, the Jas. H. Barry Co.) a book which ought to be in the hands of every American student of political science.

While direct legislation is only one feature of this program of reforms, it must be conceded that it was the central feature, both in the legislature and in the campaign that followed. The opposition was concentrated on the demand that judges be excepted from the operation of the recall. Only the personal influence of Governor Johnson secured the necessary two-thirds' vote of both houses to submit the amend-

ment without this exception, but when it came before the people it was carried by a majority so enormous as to amount practically to unanimous consent.

The session of the legislature was followed by what amounted practically to a referendum election, under the familiar guise of a series of constitutional amendments. The constitution of California is beyond all comparison the worst in the world. Adopted in 1879, in an era of distrust of legislatures, it was an elaborate code of laws to begin with, which has since been made over by thirty-two years of biennial amendments into almost inconceivable complexity. The presumption is always against the constitutionality of any act of the legislature, and the custom is to make sure by enacting it as a constitutional amendment instead. We have thus had the referendum in its worst form for thirty years, and even those who are temperamentally sceptical of direct legislation welcomed a rational referendum proposal, as the first step toward ending the irrational referendum now in operation.

There were twenty-three amendments, ranging from the most important to the most trivial. Not one of them was referred to the people in response to any petition from the people, and not over six or seven of them, aside from the initiative-referendum amendment itself, could conceivably have been the subjects of such a petition, even in the event of a legislature refusing to pass them. This particular legislature would have passed them all, if it had jurisdiction, and no one would have invoked the referendum against any of them. It was a compulsory referendum, then, imposed on the people by the rigidity of an ancient constitution. A simple constitution, with voluntary initiative and referendum, instead of swamping the people with direct legislation and superseding representative government, would have unshackled the legislature and relieved the people of the only burdensome part of the referendum they how have. In a very real sense, at least in California, the cure for too much referendum is more referendum.

An idea of the scope of the amendment election may be gained from a list of the subjects covered. They were, in the order on the ballot, (1) weights and measures; (2) county home rule; (3) divided session; (4) women suffrage; (5) logging railroads; (6) city charters; (7) initiative and referendum; (8) recall; (9) criminal appeals; (10) employer's liability; (11) civil service; (12) making railroad commission a public utilities' commission; (13) city charters; (14) municipal ownership;

(15) text books; (16) increasing railroad commission from three to five and making it appointive; (17) majority vote charters; (18) justices' courts; (19) passes; (20) making clerk of supreme court appointive; (21) making appellate judges impeachable; (22) exempting veterans from certain taxes; (23) increasing the powers of the railroad commission. The ballot was printed in such a way as to be unintelligible, and the printed arguments sent to the voters were beyond human power to read.

This was the referendum at its absolute worst. No hostile critic could have devised a more unfair test of the people, and no voluntary referendum could have thrown together such an unintelligible jumble. Neither would this or any other legislature have imposed such a burden, if it had any choice in the matter. But the people, nevertheless, did vote with surprising intelligence and discrimination. One minor railroad pass amendment was defeated; several other debatable minor amendments were passed by small majorities; the uncontested minor amendments received good majorities; and the great reforms were carried overwhelmingly. The largest two majorities were given to the two judicial amendments—the recall and the limitation of technicalities in criminal appeals. There is no subject on which the American people are so unanimous as in their repudiation of the traditional lawyer's view of these two questions.

By these amendments of course the government of the state is absolutely revolutionized. It now lacks of being completely democratic only two things—a short ballot and a short constitution—and the beginning has been made toward one of these. Governor Johnson in his message advocated shortening the state ballot to the federal model, by making all the executive officials appointive, and amendments proposing this received majorities in both houses, but failed in one or the other of the necessary two-thirds. The legislature did shorten the ballot to the extent of making the state printer appointive, and proposed constitutional amendments, which were passed, making the railroad commission appointive, and giving the supreme court the right to appoint its own clerk. But California still goes through the farce of electing its surveyor-general, to say nothing of other examples scarcely less absurd. And California, in adopting the new and rational voluntary referendum, has not yet abolished the old and irrational compulsory referendum. The moral credit of the legislature has been restored and the legislative career has become respectable and desirable. Several valuable state reputations were made at the last

session. But the restoration of effective power to the legislature still awaits the simplification of the constitution. The first condition, however, of restoring that power, is now provided. Having their check in the legislature through the initiative, referendum and recall, and on the executive and judiciary through the recall, the people will no longer fear to remove the unworkable part of the constitutional checks. The ripening of sentiment for a simpler constitution is only a matter of a little education or experience. Unquestionably, just as the direct primary compels the short ballot, by its confessed unworkability under the long ballot, so direct legislation will compel the short constitution, by its demonstrated incompatibility with any other system. And even the imperfections of the direct legislation system are not, like those of the traditional constitutional system, self-perpetuating. It is flexible instead of rigid. If the new Progressives make a blunder analogous to that of the Jacksonian democrats, they will at least do it by a method which provides the mechanism of its own cure.

The two most radical features of the California reconstruction are women suffrage and the inclusion of judges in the recall. Women suffrage was not made specifically an administration measure, though Governor Johnson personally approved of it and many of the leaders in his campaign for direct legislation were also outspoken in support of the suffrage amendment. California is the first state of the rank and general social conditions of the great Eastern states to adopt equal suffrage. More women are now enfranchised in California than in all the other suffrage states combined. At the only important election held since the adoption of the amendment—the recent municipal election in Los Angeles—the women voters outnumbered the men. They voted conservatively and intelligently, and showed astonishing capacity to extemporize a political organization on short notice. Voting was popular; even fashionable, and it all came about so naturally that the novelty at once wore off and it did not even "seem queer." So far as this one example indicates anything, the experiment is brilliantly vindicated.

The recall of judges was enacted on a sentiment and opposed on a theory. Probably few of its advocates contemplated making much practical use of it, and few of its opponents much feared that it would be practically abused. In fact, the chief practical objection to the recall is the fear that it may weaken our present useful custom of intimidating judges by agitation and abuse. With the recall in

reserve, agitation which fails to resort to it may be discounted as a bluff. There is a certain plausible logical objection in the inconsistency of setting judges to safeguard a fixed constitutional standard against the will of a temporary majority and then subjecting them to the discipline of that majority for so doing. But this extreme conception of the judicial function is such an anachronism, and is now so thoroughly repudiated by everybody, high and low, except the lawyers, that arguments based on this illogic are not received even with patience. While the American people may not yet be ready to reduce the judiciary to its original judicial function, they are so disgusted with the consequences of its historic usurpations that they are willing to set up alongside of it a new institution inconsistent with its self-assumed political functions, and let the two fight it out. And while there is not likely to be much actual conflict—since no judge will be recalled except in a case so flagrant that the issue becomes personal, rather than institutional—the mere passage of the recall amendment by an overwhelming majority serves as notice to the judges that there is a new twentieth-century spirit abroad, which demands recognition of their eighteenth-century-trained minds. So long as they suppose this to be a mere popular agitation, led by demagogues, they may fear or despise it, but their aroused attention may finally discover that the same sentiment is shared by the best thought of the country, including the really learned members of their own profession. Then they will respect it. The legal profession is the only one whose average thinking has remained absolutely untouched by the revolution which the evolutionary method has made in all other human thinking. The great lawyers of course understand, but even mediocre school teachers, physicians or labor-unionists understand. The average mediocre lawyer still adheres to the eighteenth-century method of deducing conclusions from assumed abstract principles, and he imagines this habit is the mark of a "trained mind." It is of the sort of training illustrated by the asymmetric pectoral muscles of the tumbler pigeon whose normal method of forward flight is a back somersault. Probably this assemblage, representing the best professional learning in America on questions of political science, would be unanimous in declaring undebatably false the very things which the average bar association assumes to be axiomatically true. The sooner the lawyers discover this, the more readily they will give up their present assumption that it is only ignorance which prevents the acceptance of their conclusions by the laity. What the legal profession needs is to

become either a learned or an unlearned profession. Its thinking, either way, would then square with common sense. Until then, a salutary distrust of lawyers and judges will remain one of the useful evolutionary forces. If that distrust is expressed sometimes with startling offensiveness, its educational value is thereby increased. Thus the very agitation for the recall of the judiciary is a long step toward getting that sort of a judiciary which nobody will want to recall.

The evolution of the new American state organization is not yet finished. The complete supersession of delegated by undelegated government is not to be thought of. It is impossible administratively and impractical legislatively. We shall doubtless learn by experience the limitations of direct legislation, just as we are already learning by experience the limitations of direct elections. The standard, in both cases, is not "good" government, but government by the people. The election of a governor by direct vote is government by the people. The election of a state printer by direct vote is not government by the people. The adoption or rejection of a prohibition ordinance by direct vote is government by the people. The granting of saloon licenses in Brooklyn by the vote of Scoharie, or the amendment of the San Diego charter by the vote of San Francisco, is not government by the people. Popular government is the expression of the popular will, but this will can be specifically ascertained by direct vote only in the cases where it specifically exists. In the other cases it must be generally delegated to representatives authorized to make the specific application. Experience will show where the line must be drawn. Those of us who have notions of our own about it have mostly ceased preaching them, since it is evident that the lesson is going to be learned, not by listening to us preach, but by trying it out. And then the trial may show us mistaken.

But, within whatever experience may show to be its field, direct legislation has come to stay. At the same time, for most of the detailed work of legislation, representative government must be rehabilitated. It was never so needed as now. After the simplification of state constitutions, so as to confer more general powers and relieve the more irksome of the present limitations, the most important step is doubtless to give the governor the right and the duty of legislative initiative. I doubt seriously the desirability of any artificial device for getting minorities represented in the legislature. With the weakening of party lines in state elections, any minority that ought to be represented will find its own constituency to get represented from.

And there ought to be nothing that would seriously risk giving the governor a hostile legislature. He should have a safe majority to govern with, as the English government is required to have, and if constant differences between the governor and legislature block things, they should test by referendum which shall resign. The minor minorities will get more than voice enough through the initiative and the major minority will always be represented in the legislature.

One additional legislative device is badly needed—expert commissions. Experts constitute the only small minority which ought to be represented in its own right, without needing to be elected. Their function is to represent the truth, as that of others is to represent the people. Only by conjoining the two, can wise and free government be attained. We have expert administrative commissions, and we need more legislative ones. These commissions should have a limited power of initiative, almost unlimited use as reference and examining boards, for the perfection of legislation, and no power at all of enactment. The enacting authority should rest always in the people or their direct representatives. Whenever the expert commission is unable to convince the non-expert legislator, the time is presumably not yet ripe for the measure. These three branches of the legislative act could thus represent efficiency, expert knowledge and responsibility to the people. The present system lacks all three, and exclusive direct government would lack two.

The short ballot, the short constitution, direct legislation, executive initiative, a judicial judiciary, expert advice, legislative responsibility —these are the essential goals of the reorganizations of state governments. The germs of all lie in the present Progressive movement. It is not limited to the finality of any one of them. Its limitation, as judged by Socialist critics, is that it still believes that political reform is worth getting, and that the necessary economic reforms can be reached through political reform. In its own esteem it stands, for this very reason, as the only possible bulwark against the advancing tide of Socialism.

In conclusion, may I add that these comments are submitted by a practical politician, now actively engaged in the very work under discussion, who makes no pretense to the academic equipment proper to one who would deliver instruction to a learned body. With this apology, and with some diffidence, these views are submitted for whatever they may be worth.